DEPARTMENT OF HEALTH

Adoption of Chapter 89 of Title 11, Administrative Rules

SUMMARY

1. Chapter 89, Title 11, Administrative Rules, entitled "Developmental Disabilities Domiciliary Homes", is adopted.

HAWAII ADMINISTRATIVE RULES

TITLE 11

DEPARTMENT OF HEALTH

CHAPTER 89

DEVELOPMENTAL DISABILITIES DOMICILIARY HOMES

§11-89-36	(Reserved)
§11-89-37	(Reserved)
§11-89-38	(Reserved)
§11-89-39	(Reserved)
§11-89-40	(Reserved)
§11-89-41	(Reserved)
§11-89-42	(Reserved)
§11-89-43	(Reserved)
§11-89-44	(Reserved)
§11-89-45	(Reserved)
§11-89-46	(Reserved)
§11-89-47	(Reserved)
§11-89-48	(Reserved)
§11-89-49	(Reserved)

§11-89-1 Purpose. This chapter establishes minimum requirements for the certification and licensure of developmental disabilities domiciliary homes for adult individuals with developmental disabilities or mental retardation. These rules shall promote normalization, least restrictive intervention, community and social integration, personal development to fullest potential and protect the health, safety, and civil rights of residents in developmental disabilities domiciliary homes. These rules shall not be construed as lowering the standards, ordinances, codes, and rules established by other government agencies. In the case of a conflict, the more stringent rules shall apply.
[Eff FEB 03 1992] (Auth: HRS §§321-9, 321-11, 321-15.9) (Imp: HRS §321-15.9)

§11-89-2 Definitions. As used in this chapter, unless a different meaning clearly appears in the context:

"Administrator" means the person responsible for managing and administering the developmental disabilities domiciliary home(s) and who assures that appropriate care for the residents is provided.

"Behavior management" means the use of behavior modification techniques, physical restraints, behavior-modifying drugs, or aversive stimuli to develop and reinforce socially or personally desirable behavior and eliminate or reduce, or both, a resident's maladaptive behavior(s).

"Capable of self-preservation" means a person who has the mental capacity and physical capability to follow instructions and to evacuate from the facility safely without human assistance in emergency situations.

"Cardiopulmonary resuscitation" (CPR) means an emergency first aid procedure which consists of opening and maintaining a person's airway, providing artificial ventilation through rescue breathing and providing artificial circulation through external cardiac compression.

"Caregiver" means a person who is certified as responsible for providing direct care and training to a resident as specified in the resident's individual plan and who may supervise new personnel.

"Case manager" means the person who is responsible for developing the resident's individual plan, and monitoring, coordinating, facilitating and advocating for resident services as indicated in the individual plan.

"Certification" means a formal declaration by the department that a caregiver has met the prescribed certification standards of this chapter.

"Department" means the department of health of the State of Hawaii.

"Developmental disabilities division" is the division of the department designated to plan, coordinate, implement, monitor, and provide services to developmentally disabled persons as defined in chapter 333F, HRS.

"Developmental disabilities domiciliary home" means any facility licensed under this chapter to provide twenty-four hour supervision or care, excluding licensed nursing care, for a fee, to not more than five adults with mental retardation or developmental disabilities as defined in chapter 333F, HRS.

"Dietitian" means a person who is registered or is eligible for registration by the commission on dietetic registration of the American Dietetic Association.

"Director" means the director of health.

"Division" means the developmental disabilities division.

"Facility" means a home in the process of seeking a developmental disability domiciliary home license or a home already licensed as such.

"Fully ambulatory" means able to walk without human assistance or assisting devices.

"Individual Plan (IP)" means a specific plan of care which sets forth a structured set of services in the residential setting designed to achieve purposeful outcomes for the resident. The plan specifies the habilitation and support services to be provided, behavioral and service objectives, and the outcomes to be achieved.

"Interdisciplinary team" means a group of persons who participate in the identification of resident needs and the determination of resident services. At a minimum, the team shall include the resident, caregiver and case manager. The team may also include persons who have worked or will work closely with the resident, persons who provide needed assessments or services, and the resident's family, guardian, or advocate.

"License" means a document issued by the department which indicates that the caregiver, facility, and program meet the standards of this chapter.

"Licensed capacity" means the number of residents and specific restrictions, if any, stated on the license which limits the type of residents permitted by the director in a particular facility.

"Normalization" means the process of giving the residents the opportunity to experience a normalizing environment consisting of daily rhythms, life cycle, and making choices.

"Nutritionist" means a person who has completed a master's degree in public health nutrition or nutritional sciences from an accredited university, and is a registered dietitian or is eligible for registration by the Commission on dietetic registration of the American Dietetic Association.

"Personal care" means basic activities normally performed independently by individuals, such as toileting, bathing, dressing, eating, body hygiene, and ambulation.

"Physician" means an individual holding a valid license to practice medicine or osteopathy issued under chapters 453 or 460, HRS.

"Registered professional nurse" means a person who is licensed as a registered nurse in the State of Hawaii, as defined by chapter 457, HRS.

"Resident" is an adult with developmental disabilities who is unrelated to the caregiver, resides in a domiciliary home for a fee, is unable to live independently, requires supervision, care and training, and who does not require care by a licensed nurse.

"Responsible adult" means an adult who temporarily takes charge of a domiciliary home during the absence of the caregiver or administrator.

"Semi-ambulatory" means those residents who are able to walk with human assistance or assisting devices.

"Special diet" means a special or limited selection of food or drink which is included in the Hawaii diet manual and ordered by a physician.

"Standard chest x-ray" means a chest x-ray taken by standard techniques.

"Tuberculin skin test" means an intradermal injection of .0001 mg (5 tuberculin units) of purified protein derivative in 0.1 cc of sterile diluent.

"Waiver" means an exemption from a specific rule or regulation.

Whenever the singular is used in this chapter, it can include the plural. [Eff FEB 03 1992]
(Auth: HRS §§321-9, 321-11, 321-15.9)
(Imp: HRS §321-15.9)

§11-89-3 Licensure. (a) No person, or group of persons may operate a developmental disabilities domiciliary home unless it is licensed by the department.

(b) Any person, or group of persons, desiring to operate a developmental disabilities domiciliary home shall apply to the department on forms furnished by the department. The department shall issue a license if the applicant meets the requirements of this chapter.

(c) The caregiver and administrator shall provide two references who have adequate knowledge of the applicant's background in terms of character and ability to care for residents with developmental disabilities. Additional references shall be furnished upon the department's request.

(d) The caregiver and administrator shall also complete clearances from:

(1) Adult and child abuse and neglect registry

(2) Hawaii criminal justice data center - Federal bureau of investigation fingerprinting clearance.

(e) A developmental disabilities domiciliary home shall consist of a caregiver's certification and facility license.

(f) No license shall be issued without certification approval as stated in sections 11-89-7 and 11-89-8 of these rules.

(g) A license, when issued, shall be in force for one year, or at such other interval of time as may be decided by the department, and shall expire at that time unless renewed or extended by the department.

(h) Each non-transferable license shall be issued to a person or agency by name and terminated on the date such individual withdraws from the ownership, management, control or operation of the facility.

(i) Prior to licensure, a full disclosure of the facility's ownership or control, and a projected annual budget showing the home's expected income and expenditures at full occupancy shall be submitted to the department. The financial resources of the owner shall be sufficient to operate the facility according to standards set forth in this chapter.

(j) Prior to licensure, current written policies governing the facility's rates, proposed staffing, visiting hours, emergency plans, access to records, residents' rights, and any other written policies required by this chapter for the type of residents proposed to be admitted, shall be submitted to the department. When policies are changed, an updated copy shall be submitted to the department.

(k) If the caregiver contemplates regular remunerative work outside the facility, the department shall be notified prior to accepting such employment. Approval of appropriate caregiver substitutes shall be obtained from the department prior to the start of outside employment. Failure to notify the department shall be considered sufficient grounds for decertification. In the event the caregiver finds full time employment outside the facility, one person qualifying under §11-89-7 (a) shall assume the duties of the caregiver.

(l) If the facility seeks to employ a qualified person to render a required or necessary service, it shall have a written agreement or contract with such outside person or provider. Written agreements or contract shall include the responsibilities, functions, objectives, and terms of employment, and shall be signed by the facility's administrator and the provider, or the provider's authorized representative.

(m) A provisional license may be issued at the discretion of the department if the administrator is unable to correct deficiencies in the facility according to an accepted plan of correction and additional time is needed to complete the corrections. Provisional licenses shall not exceed one year.

(1) The division may recommend provisional approval for re-licensure based on its annual licensing survey.

(2) Provisional licenses shall not be issued to applicants for an initial license nor for deficiencies that affect basic health and safety.

(3) The duration of a provisional license may be based on the time necessary to correct the cited deficiencies to the satisfaction of the department and shall not exceed one year. If cited deficiencies are not corrected by the expiration date shown on the face of the license, the department may issue a second provisional license for a term not to exceed one year or revoke the license.

(4) Not more than two (2) successive provisional licenses shall be issued to a specific facility.

[Eff FEB 03 1992] (Auth: HRS §§321-9, 321-11, 321-15.9) (Imp: HRS §321-15.9)

§11-89-4 License denial. (a) A license may be denied for any of the following reasons:

(1) Inability to meet the requirements of this chapter;

(2) Financial inability to operate and conduct the facility pursuant to this chapter;

(3) Fraudulent or misleading statements in application forms; or

(4) Prior felony or criminal convictions in a court of law by applicant.

[Eff FEB 03 1992] (Auth: HRS §§321-9, 321-11, 321-15.9) (Imp: HRS §321-15.9)

§11-89-5 Certification. (a) The caregiver shall be capable of accepting, caring for, and training residents with developmental disabilities.

(b) A certificate shall be issued to the caregiver when the caregiver has completed and passed the training requirements as stated in §§11-89-7 and 11-89-8 of these rules.

(c) Annual recertification shall be required in accordance with §11-89-8. [Eff FEB 03 1992] (Auth: HRS §§321-9, 321-11, 321-15.9) (Imp: HRS §321-15.9)

§11-89-6 Appeal of department's decision. (a) Any developmental disabilities domiciliary home applicant or provider shall have the right and opportunity to appeal a decision by writing to the director within the thirty (30) day notice period of proposed action or decision under chapter 91, HRS, and department rules of practice and procedure.

(b) Upon the department's receipt of a request to appeal the department's decision, certification or licensure may be reinstated to provisional certification or licensure pending the decision on appeal.

(c) The provisional certification or licensure shall be revoked by the department after the appeal hearing is held and the department's decision is upheld. If the department's action is not upheld by the appeal hearing, action, as appropriate, to reinstate the certification or licensure shall be made. [Eff FEB 03 1992] (Auth: HRS §§321-9, 321-11, 321-15.6, 321-15.9) (Imp: HRS §321-15.9)

§11-89-7 Qualifications of caregiver and administrator. (a) The caregiver of a facility shall:

(1) Be at least eighteen years of age and be able to read, write and communicate in English;
(2) Be CPR and first aid trained;
(3) Have completed department approved developmentally disabled domiciliary training and be certified to provide care and training to residents with developmental disabilities;
(4) Provide care, training and supervision to the residents and shall have no outside activity or family responsibilities that will interfere with that care and supervision;
(5) Be available to and participate as a member of the interdisciplinary team;
(6) Conduct care and training of the resident in accordance with the resident's individual plan; and
(7) Meet all other general staff requirements as provided in section 11-89-9.

(b) The administrator of the facility shall be responsible for:

(1) Administering the facility in accordance with this chapter and established policy, program and budget;
(2) Developing an administrative plan and operational procedures which show clear lines of authority and which delineates supervisory relationships with accompanying position description; and
(3) Developing a written provision for the continued operation of the facility with appropriate assignment of the caregiver's responsibilities whenever the caregiver is absent; and
(4) Facilitate the integration of the resident into the family and community.

[Eff FEB 03 1992] (Auth: HRS §§321-9, 321-11, 321-15.9) (Imp: HRS §321-15.9)

§11-89-8 Provision for services and review. (a) All persons seeking to be certified as a caregiver shall attend and pass a training program approved by

the department, which shall include:

(1) Orientation on the person with developmental disabilities, including but not limited to physical and mental handicaps, legal concepts, and the caregiver's qualifications, normalization, control of environment, health care, communication, and recording.

(2) A developmental program which shall include training on residents' rights, orientation to interdisciplinary team composition and responsibilities, case management and day program responsibilities, individual habilitation plan development which shall include orientation to individual program requirements, behavior management and health maintenance.

(b) The department shall provide a certificate to the trainee upon completion of the training and passing a proficiency test.

(c) Uncertified personnel shall be trained within three months of hire and be supervised by a certified caregiver. Uncertified personnel may be trained by a licensed nurse to make medications available until certified.

(d) All certified caregivers shall upgrade their skills by taking a minimum of eight hours, per year, of workshop or inservice programs approved by the division as a part of the requirement for the annual recertification. [Eff FEB 03 1992]
(Auth: HRS §§321-9, 321-11, 321-15.9)
(Imp: HRS §321-15.9)

§11-89-9 General staff health requirements. (a) All individuals living in the facility including those who provide services directly to residents shall have documented evidence that they have had examination by a physician prior to their first contact with the residents of the home and thereafter as frequently as the department deems necessary. The examination shall be specifically oriented to rule out communicable disease and shall include tests for tuberculosis.

(1) If an initial tuberculin skin test is negative, a second tuberculin skin test shall be done after one week, but no later than three weeks after the first test. The results of the second test

shall be considered the baseline test and shall be used to determine appropriate treatment follow-up. If the second test is negative, it shall be repeated once yearly thereafter unless it becomes positive.

(2) If a tuberculin skin test is positive, a standard chest x-ray and appropriate medical follow-up shall be obtained. A satisfactory chest x-ray shall be required yearly thereafter for three successive years.

(3) Additional chest x-rays may be required by the director.

(b) Any individual providing services to the residents who develops evidence of a communicable disease shall be immediately relieved of any duties relating to food handling or direct resident contact, or both, and shall continue to be relieved of duties until such time as a physician certifies it is safe for the individual to resume the duties. Undiagnosed skin lesions, respiratory tract symptoms or diarrhea shall be considered presumptive evidence of a communicable disease.

(c) There shall be clear documentation that all persons who provide services to residents have been informed of the requirements provided in subsections (a) and (b).

(d) The department may require an examination by a physician of any caregiver, administrator or staff as a condition for continued licensure at any time the department feels the health or safety of residents may be in danger. The examination shall be oriented to determine if the caregiver, administrator or staff person is capable of caring for the residents or has a condition which would endanger the health or safety of residents.

(e) The caregiver of a facility shall give as much advance notice as possible, but not less than two weeks, except for emergencies, to residents, parents, guardians, case manager, and the division, if the caregiver plans to be absent for more than two days. Plans for coverage during the period of absence by a responsible adult shall be handled on an individual basis and shall be submitted in writing to the division for approval. Responsible adults shall have current tuberculin clearances and shall be physically and mentally capable of providing all necessary services to residents.

(f) Responsible adults shall be capable of managing any emergency occurring in the facility as well as the caregiver could have managed had he or she been present. At a minimum, the responsible adult shall have the following skills during the periods of absence of the certified caregiver. This does not preclude the temporary transfer of the residents to another suitable certified and licensed facility.

Duration of absence of the caregiver	Required skills of the responsible adult
As long as zero-three hours	(1) Able to communicate, read and write in the English language. (2) Trained to make medications available to residents and properly record such action. (3) Be CPR certified. (4) Have a valid certificate in first aid training. (5) Give personal care as needed. (6) Able to take temperature, pulse, and respiration.
As long as four-six hours	In addition to the above, must be able to: (7) Cook and serve an appropriate meal. (8) Give necessary feeding assistance. (9) Dress and bathe residents. (10) Follow recreational programs as prescribed in the individual plan. (11) Transport residents to out of home events and appointments.

Greater than six hours	In addition to the above, must follow operational protocol of the home.

(g) If the certified caregiver is to be absent from the facility for more than one week, another certified caregiver shall be required to be present. [Eff FEB 03 1992] (Auth: HRS §§321-9, 321-11, 321-15.9) (Imp: HRS §321-15.9)

§11-89-10 Waivers. (a) Waivers may be granted to a facility, for a specified period of time at the discretion of the department. A waiver may be renewed at the discretion of the department.

(b) Waivers of structural requirements shall not be granted unless:

(1) All residents are fully ambulatory and capable of self-preservation in emergency situations;

(2) The waiver will not create a hazard to health or safety; and

(3) Structural changes required would place an undue financial burden upon the licensee.

(c) All waivers of the department shall be set forth in writing and shall not be transferred from one licensee to another or from one location to another. [Eff FEB 03 1992] (Auth: HRS §§321-9, 321-11, 321-15.9) (Imp: HRS §321-15.9)

§11-89-11 Inspection rights of the department. (a) Every licensed facility shall be inspected by the department at least once every year to determine compliance with this chapter.

(b) The department may inspect a licensed facility at any reasonable time without prior notice to conduct annual inspections, confirmation of correction or non-correction of deficiencies, and investigation of complaints. [Eff FEB 03 1992] (Auth: HRS §§321-9, 321-11, 321-15.9) (Imp: HRS §321-15.9)

§11-89-12 Structural requirements for licensure. (a) Prior to licensure, the applicant shall provide the department with evidence that the facility meets all requirements of state and county zoning, building, fire, sanitation, housing, and other codes, ordinances

and laws for the type of occupancy to be licensed.

(b) Once licensed, the administrator shall be responsible for ensuring that the facility is maintained in compliance with all state and county zoning, building, fire, sanitation, housing and other codes, ordinances, and laws.

(c) The facility shall be accessible to public transportation or provide means of transportation.

(d) An enclosed family dining area shall be provided within the facility and shall be accessible to all residents. It shall be apart from sleeping quarters but may be in continuity to the living room area.

(e) Dining space allotment shall not be less than twenty square feet per adult residing in the facility.

(f) The family living room shall be accessible to all residents for the provision of recreational, social and activity needs of the residents.

(g) Living room space shall not be less than thirty square feet per adult residing in the facility.

(h) Bedrooms:

(1) Bedroom shall be at or above grade level and be accessible to all persons who use wheelchairs;

(2) There shall be an adequate number of bedrooms, as defined in county residential codes and building ordinances, provided for the caregiver and family members;

(3) Residents shall be provided with a minimum usable floor space of ninety square feet per bed in a single bedroom and seventy square feet per bed in a multiple bedroom, excluding toilet, closets, lockers, alcoves and vestibules;

(4) The number of occupants in bedrooms shall be limited to two residents. Beds shall be placed at least three feet apart in multiple occupant bedrooms;

(5) Closet space for each resident shall be provided within the bedroom. Closets shall be a minimum of thirty inches in width, twenty inches in depth, and five feet in height per person. Each closet must contain a height-adjustable clothes rod for the persons with handicapping conditions; and

(6) Each occupied room shall have access to exits as required by law.

(i) If required by a resident's individual plan, there shall be a means of signaling caregivers at bedside, in bathrooms, toilets, and in other areas where residents may be left unattended.

(j) Access from each bedroom to a bathroom, toilet, corridor or central utility area shall be arranged to avoid passing through another bedroom, or cooking, dining or recreational areas.

(k) Bathrooms:

(1) At least one toilet, lavatory and bathtub or shower shall be conveniently located and provided for each floor occupied by residents for sleeping;

(2) There shall be:

(A) One toilet for each eight occupants;

(B) One shower for each fourteen occupants;

(C) One lavatory for each ten occupants, in accordance with county codes and ordinances;

(3) Toilets, bathtubs and showers shall have provisions for individual privacy;

(4) For facilities accommodating wheelchair residents, showers which are flush with the floor shall be provided. Showers shall have a minimum floor area of twelve and a half square feet arranged and located to accommodate residents and the caregiver providing personal care. The shower entrance shall be at least thirty-six inches wide. Adjacent areas shall be protected from the water; and

(5) Every bathroom door shall be designed to permit the opening of the locked door from the outside in the case of an emergency.

(l) Doors:

(1) Two exit doors which are remote from each other shall be provided for each floor;

(2) All door openings through which wheelchairs or walkers must pass shall be at least thirty-six inches in clear width measured from the face of the door to the door stop when opened at ninety degrees; and

(3) All rooms inside the facility under the same roof shall be connected by interior doors.

(m) Corridors shall be at least thirty-six inches wide, except in facilities which have wheelchair residents where the corridors shall be at least forty-two inches wide.

(n) In multi-level homes, there shall be an inside enclosed stairway.

(o) Conveniently located space for personal care items and for equipment, such as crutches and wheelchairs, shall be provided.

(p) Ramps shall not exceed a slope of more than one inch per foot and shall be covered with non-slip material. Those ramps which exceed seventy-two inches in length or have a rise greater than six inches shall have handrails on both sides.

(q) Drawings and specifications for all new construction or additions, alterations or repairs to existing buildings shall be submitted to the department for preliminary review prior to construction and shall comply with current applicable state and county building, fire, sanitation and environmental codes, ordinances, and laws.

(r) The department shall be provided with evidence that the premises for which the licensure is sought complies with the state and county sanitation, building, zoning and fire codes, ordinances, and laws. Compliance shall be determined by the counties in which the facility is to be located.

[Eff FEB 03 1992] (Auth: HRS §§321-9, 321-11, 321-15.9) (Imp: HRS §321-15.9)

§11-89-13 Residents' rights. (a) Written policies and procedures addressing the rights of residents during their stay in the facility shall be established and shall be made available to the resident, guardian, next of kin, responsible agency, and the public. It shall be the right of each resident admitted to the facility to:

(1) Be fully informed both orally and in writing, in the language the resident understands, prior to or at the time of admission, of their rights and of all rules governing resident conduct. There shall be documentation signed by the resident or resident's legal guardian that they have been informed of their

rights and have been provided a written description of such rights;

(2) Be fully informed, prior to or at the time of admission, and during stay, of services available in or through the facility and of any related charges, changes thereto, including any charges for services not covered by the facility's basic per diem rate, or any changes thereto;

(3) Be given advance notice of not less than four weeks, of transfer or discharges, except in an emergency;

(4) Be encouraged and assisted to exercise the resident's rights, such as voicing grievances and recommending changes in policies and services to staff or outside representatives of the resident's choice, without fear of retaliation, restraint, interference, coercion, discrimination or reprisal. All residents shall be provided with the address and phone number of the State long-term care ombudsman;

(5) Be informed of the conditions under which the facility may manage the resident's personal financial affairs as detailed in §11-89-20;

(6) Be free from humiliation, harassment, threats, and chemical or physical restraints. Physical restraints may be used only in an emergency when necessary to protect the resident from injury to self or to others. In such a situation the resident's physician shall be notified as soon as possible and orders obtained for the care of the resident shall be followed;

(7) Have their personal and medical records kept confidential and subject to release only as provided in §11-89-18 (f);

(8) Be treated with understanding, respect, and full consideration of the resident's dignity and individuality, including privacy in treatment and in care of the resident's personal needs;

(9) Not be required to perform services for the facility, its caregiver or staff unless agreed to by the resident and the

interdisciplinary team. All services shall be noted in the resident's chart;

(10) Associate and communicate privately with persons of the resident's choice, send and receive personal mail unopened, and to have reasonable access to a phone;

(11) Meet with and participate in activities of social, religious, and community groups at the resident's discretion;

(12) Retain and use personal age-appropriate, clean and fashionable clothing and possessions as space permits, unless to do so would:

(A) Infringe upon the rights of other residents, or

(B) Is specifically forbidden by written orders of the resident's physician;

(13) Be assured of privacy for visits by the spouse, and if both are residents in the home, be permitted to share a room if agreeable to both;

(14) Have daily visiting hours and provisions for privacy established;

(15) Reject living in a particular facility;

(16) Live in a normal, clean, and comfortable environment with age-appropriate, aesthetic and adequate furniture and equipment;

(17) Not suffer dietary restrictions as punishment;

(18) Have a right to locked storage space;

(19) Be free from mental, sexual, physical, and verbal abuse, financial exploitation, or neglect;

(20) Manage their personal funds and be informed in writing when there is a change in the resident's personal allowance; and

(21) Be informed of who is the resident's case manager. [Eff FEB 03 1992]

(Auth: HRS §§321-9, 321-11, 321-15.9)
(Imp: HRS §321-15.9)

§11-89-14 Resident health and safety standards. (a) The caregiver shall, in coordination with the case manager, arrange for resident access to medical services at all times, including emergency services.

The facility shall have a written policy which specifies the procedures to be followed in medical emergencies.

(b) Basic first aid supplies and equipment shall be available at the facility.

(c) In the event of an emergency concerning a resident such as hospitalization, serious illness, serious bodily harm or injury, or imminent death or death, the caregiver shall inform the case manager, who in turn, shall promptly notify the resident's next of kin, guardian or significant others. The wishes of the resident and the parent or guardian regarding religious matters shall be considered, and the resident's wishes shall be followed as closely as possible.

(1) Staff observing an emergency shall complete a written incident report within twenty-four hours of the emergency and shall submit it to the case manager within seventy-two hours.

(2) In cases of known or suspected neglect or abuse, the staff person aware of the situation shall notify the adult protective services (APS) which is mandated to have the authority to investigate such incidents, and/or for elderly persons at least sixty-five years of age, follow procedures as outlined in chapter 349C, HRS.

(d) The caregiver shall develop an emergency evacuation plan to ensure rapid evacuation of the facility in the event of fire or other life-threatening situations. The plan shall be posted and shall include a provision for evacuation drills as follows:

(1) Evacuation drills shall be held at least monthly and at varied times during the twenty-four hour period. Instruction in the evacuation procedures shall be given to each new resident upon admission to the facility.

(2) A written record of each drill shall be kept on file.

(3) Each resident of the facility shall be certified annually by a physician that the resident is capable of self-preservation. A maximum of two residents not so certified may reside in the facility provided that a staff ratio of one-to-one is maintained, at all times, for each of these residents and

there are no stairways which must be negotiated by such noncertified residents. As an alternative, the facility shall install an automatic sprinkler system, as defined in the national fire protection association's 101 life safety code.

(e) Medications:

(1) All medicines shall be properly and clearly labeled. The storage shall be in a staff-controlled workcabinet/workcounter apart from either residents' bathrooms or bedrooms.

(2) Drugs shall be stored under proper conditions of sanitation, temperature, light, moisture, ventilation, segregation, and security. Medications that require storage in a refrigerator shall be properly labeled and kept in a separate locked container.

(3) Compartments shall be provided, for each resident's medications and separated as to:

(A) External use only; and

(B) Internal use only.

(4) All poisons shall be plainly labeled and stored separately in a locked cabinet.

(5) All medications and supplements, such as vitamins, minerals, and formulas shall be made available by written physician order and shall be based upon current evaluation of the resident's condition.

(6) All physician orders shall be re-evaluated and signed by the physician every three months or at the next physician's visit, whichever comes first.

(7) All verbal orders for medication shall be recorded on the physician's order sheet by the certified caregiver receiving the verbal orders. Written confirmation from the attending physician shall be obtained within seventy-two hours.

(8) Only an appropriately trained caregiver shall be allowed to make available prescribed medications to residents.

(9) Medications shall not be offered to any resident other than the one for whom they were ordered.

(10) Medication errors and drug reactions shall be reported immediately to the physician responsible for the medical care of the resident and the case manager. An incident report shall be prepared within twenty-four hours from the time of the incident and shall be properly documented in the resident's record.

(11) Discontinued or outdated medications shall be disposed of by flushing down the toilet.

(12) All medications and supplements, such as vitamins, minerals, and formulas, shall have written physician's orders and shall be labeled according to pharmaceutical practices for prescribed items. When taken by the resident, the date, time, name of drug, and dosage shall be recorded on the resident's medication record and initialed by the certified caregiver.

(13) Only oral, suppository and topical medications shall be made available to the resident for administration or application. Any injections or intravenous medication shall be administered by a licensed nurse.

[Eff FEB 03 1992] (Auth: HRS §§321-9, 321-11, 321-15.9) (Imp: HRS §321-15.9)

§11-89-15 Recreational and social activities. (a) Residents shall be up, out of bed and appropriately dressed, daily, unless physician's orders indicate otherwise.

(b) The caregiver shall provide and document social and recreational activities for residents on a regular basis and shall encourage participation in activities according to the resident's interest, needs, capabilities, and service plan.

(c) Residents shall be encouraged by the caregiver to participate in work, educational, recreational, social, and health activities held by community agencies.

(d) Visits with relatives and friends shall be allowed at reasonable hours.

(e) The administrator or caregiver shall provide the resident with access to a radio and television.

(f) Arrangements and provision for social activities shall be provided through private or public resources.

(g) The administrator or caregiver shall arrange or provide means of transportation for residents to:

(1) Visit physician and other medical providers;

(2) Make facility transfers; or

(3) Engage in activities outside the home.

[Eff FEB 03 1992] (Auth: HRS §§321-9, 321-11, 321-15.9) (Imp: HRS §321-15.9)

§11-89-16 Admission policies. (a) Admissions shall be screened for eligibility by the division prior to admission.

(b) The caregiver shall coordinate with the division for screening, placement, and case management prior to admission.

(1) The case manager shall develop an individual plan with the resident, guardian, family, or significant others based upon the assessment and preferences of the resident and outcome to be achieved.

(2) All individual plans shall be monitored and revised at lease annually and as necessary by the case manager.

(c) All residents shall be persons with developmental disabilities, or mental retardation as defined in chapter 333F, HRS. Placement shall be made upon the approval of the division and shall be guided by the normalization principle.

(d) No administrator or caregiver shall deny admission to any individual solely on account of race, color, religion, ancestry, national origin, or handicap.

(e) The facility shall refuse a person for admission if the caregiver or agency does not have the capability for providing appropriate care.

(f) The number of admissions shall not exceed the facility's licensed capacity as specified on the license. [Eff FEB 03 1992] (Auth: HRS §§321-9, 321-11, 321-15.9) (Imp: HRS §321-15.9)

§11-89-17 General operational policies. (a) There shall be written operational policies and procedures available to staff and residents which address the implementation of:

(1) Admission policies as specified in section 11-89-16;
(2) Dietary and other services provided by the facility;
(3) Transfer and discharge of residents as specified in section 11-89-21;
(4) Residents' rights;
(5) Rate setting and visiting hours;
(6) Infection control;
(7) Management of behavior;
(8) Requirements relating to physical and chemical restraints;
(9) Personnel requirements, whether compensated or voluntary; and
(10) Grievance procedures, whether from resident or staff.

(b) Upon admission, there shall be written documentation that the resident, guardian, or next of kin was fully informed of policies governing the resident's care.

(c) There shall be written policies and procedures that prohibit mistreatment, neglect or abuse of residents. The caregiver shall:

(1) Not allow verbal, mental, sexual, or physical abuse, or misappropriation of funds or property of residents;
(2) Not knowingly employ individuals who have been convicted of crimes set forth in subsection 11-89-17 (c)(1);
(3) Notify the case manager and day program staff if a resident demonstrates maladaptive or disruptive behavior. They shall plan and institute any behavior management program. The program shall be directed toward maximizing the growth and development of the individual by incorporating a hierarchy of available methods that emphasize positive approaches. Such policies and procedures shall address:
(A) the definition of behavior management programs;
(B) staff training requirements;
(C) staff authorized to use the programs; and
(D) the mechanism to be used to monitor the implementation of any behavior management program;
(4) Ensure that all alleged violations involving mistreatment, neglect, or

abuse, including injuries of unknown source or misappropriation of funds or property, are reported immediately to the administrator of the facility or to other officials in accordance with State law;

(5) Thoroughly investigate all alleged violations, prevent further potential abuse while the investigation is in progress and document all facts relating to the investigation; and

(6) Ensure that results of all investigations, including citations, be reported to the administrator or designated representative or to other officials in accordance with State law within five working days of the incident, and if the alleged violation is verified, take appropriate action.

(d) The department shall require that any complaint concerning a specific facility be expressed in a signed statement. [Eff FEB 03 1992]
(Auth: HRS §§321-9, 321-11, 321-15.9)
(Imp: HRS §321-15.9)

§11-89-18 Records and reports. (a) Individual records shall be maintained for each resident. Upon admission or readmission, the facility shall maintain:

(1) Records which identify the resident's name, social security number, marital status, date of birth, sex, next of kin or guardian, and religious preference, if any. A record of the address and telephone number of the referral agency or source by which the resident was admitted, the attending physician, dentist, and other medical or social service professionals who are currently involved in providing services to the resident, as well as a record of the agency responsible for financial payment, and the medical insurance plan;

(2) A report of a medical examination current to within nine months and current diagnosis, physician's orders for medication, diet, special appliances and equipment, treatment, evaluations or direct service to be provided by a

physical therapist, occupational therapist, or speech pathologist and a report of an examination for tuberculosis performed within the year prior to admission, height and weight and medical history;

(3) Copies of the resident's individual plan; and

(4) An inventory of money and valuables. This inventory shall be kept current.

(b) During residence, records shall be maintained by the caregiver and shall include the following information:

(1) Copies of physician's initial, annual and other periodic examinations, evaluations, medical progress notes, relevant laboratory reports, and a report of re-examination of tuberculosis;

(2) Observations of the resident's response to medication, treatments, diet, provision of care, response to activities programs, indications of illness or injury, unusual skin problems, changes in behavior patterns, noting the date, time and actions taken, if any, which shall be recorded monthly or more often as appropriate but immediately when an incident occurs;

(3) Entries by the caregiver describing treatments and services rendered;

(4) Medications made available;

(5) Physician's signed orders for diet, medications, special appliances, adaptive equipment, and treatments;

(6) All recordings of temperature, pulse, respiration as ordered by a physician or as may appear to be needed. Physicians shall be promptly advised of any changes in physical or mental status;

(7) Recording of resident's weight at least once a month, and more often when requested by a physician;

(8) Notation of visits and consultations made to residents by other authorized personnel; and

(9) Correspondence pertaining to the resident's physical and mental status.

(c) Unusual incidents shall be noted in the resident's progress notes. An incident report of any bodily injury or other unusual circumstances affecting a resident which occurs within the home, on the premises, or elsewhere shall be submitted to the case manager within twenty-four hours from the time of the incident and shall be retained by the facility under separate cover, and shall be made available to the department and other authorized personnel. The resident's physician shall be called immediately if medical care is necessary.

(d) When a resident is transferred, the caregiver shall provide a written transfer summary promptly to the receiving facility, which shall include:

(1) The reason for the transfer;
(2) Evidence of prior notice or the written consent of the resident's legal guardian, if any;
(3) Current physical and mental status of resident; and
(4) Current diet, medication, and activity orders signed by a physician.

In the course of an emergency transfer, as much of the information required in section 11-89-21 shall be given as time permits.

(e) General rules regarding records:

(1) All entries in the resident's records shall be written in blue or black ink, or typewritten, shall be legible, dated, and signed with full signature and title by the individual making the entry;
(2) Erasures and white outs shall be not be permitted;
(3) Symbols and abbreviations may be used in recording entries only if they conform to standard medical symbols or a legend is provided to explain them;
(4) An area shall be provided for the safe and secure storage of residents' records which must be retained by the facility for periods as prescribed by state law; and
(5) All records shall be complete and current and readily available for review by the department or any responsible placement agency.

(f) All information contained in resident's record shall be treated by the staff as confidential. Written consent of the resident or resident's guardian,

shall be required for the release of information to persons not otherwise authorized to receive it. Records shall be secured against loss, destruction, defacement, tampering, or use by unauthorized persons. There shall be written policies governing access to, duplication of, and release of any information from the resident's record. Records shall be readily accessible and available to authorized department personnel for the purpose of determining compliance with the provisions of this chapter.

(g) Miscellaneous records:

(1) A permanent general register shall be maintained to record all admissions and discharges of residents;

(2) When requested statistical information shall be provided to the department; and

(3) Records of evacuation drills shall be available to the department for inspection.

[Eff FEB 03 1992] (Auth: HRS §§321-9, 321-11, 321-15.9) (Imp: HRS §321-15.9)

§11-89-19 Nutrition. (a) Meals shall be well-balanced and sufficient in quantity, quality, and variety to meet nutritional requirements of residents and shall be in accordance with the national research council of the national academy of sciences most current recommended dietary allowance (RDA), and adjusted to age, sex, activity, and disability.

(b) All foods shall be procured, stored, prepared, and served under sanitary conditions.

(c) Foods shall be selected and prepared to meet the food desires and habits of residents as much as possible, provided nutritional quality is maintained. One week's menu shall be posted. There shall be a minimum of food supplies for three days, which will be adequate for the number of people to be served.

(d) Foods shall be stored in covered containers.

(e) Refrigerators shall be equipped with an appropriate thermometer and temperature shall be maintained at 45°F or lower.

(f) Toxic chemicals and cleaning agents, such as insecticides, fertilizers, bleaches, and all other poisons shall be properly labeled and securely stored apart from any food supplies.

(g) All caregivers shall wash hands thoroughly before starting work and as often as necessary to remove any soil or other contamination and after

personal use of bathroom facilities.

(h) Water supply shall be of a safe, sanitary quality and from an approved source. Hot and cold running water under pressure shall be provided in all areas where food is prepared and where equipment, utensils, and containers are washed.

(i) A minimum of three meals shall be provided at regular intervals in each twenty-four hour period.

(j) There shall not be more than fourteen hours between a substantial evening meal and breakfast.

(k) Meals shall be served attractively, in a comfortable, pleasant atmosphere in the designated dining area. Eating utensils and dishes designed to meet the needs of each resident shall be provided.

(l) Special diets shall be provided for residents when ordered by a physician. Caregivers who have not received special diet training may not accept residents requiring special diets until trained by a qualified dietician or nutritionist.

(m) If a resident converts to special diet while residing in the facility, the caregiver shall obtain instruction and submit menus to a qualified dietician or nutritionist for review within two weeks of the order, if not trained in the specific diet required.

(n) Between meal nourishment consistent with need shall be offered routinely to all residents.

(o) Special diet orders shall be updated every three months by a physician. Verbal orders for special diets shall be recorded on the physician order sheet by the caregiver receiving the verbal orders and written confirmation by the attending physician shall be obtained at the next office visit.

(p) Caregivers shall supervise the residents according to their needs for self-help procedures, and ensure that each resident receives an adequate amount of food. [Eff FEB 03 1992] (Auth: HRS §§321-9, 321-11, 321-15.9) (Imp: HRS §321-15.9)

§11-89-20 Resident accounts. (a) The conditions under which the caregiver agrees to be responsible for the residents' funds or property shall be explained and agreed to by the resident, or the guardian, and documented in the resident's file.

(b) No person associated with the ownership or operation of the facility shall serve as guardian of the estate or have power of attorney for any resident in the home.

(c) An accurate written accounting of residents'

income and disbursements shall be kept on an ongoing basis, including receipts for expenditures.

(d) A current inventory of residents' possessions shall be maintained.

(e) Misappropriation of residents' funds or property shall be reported to the proper authorities. [Eff FEB 03 1992] (Auth: HRS §§321-9, 321-11, 321-15.9) (Imp: HRS §321-15.9)

§11-89-21 Transfer and discharge of residents. Except in an emergency situation that affects the resident's health or safety, four weeks written notice of a transfer to an appropriate facility, or discharge to another living arrangement, or a transfer within the facility, shall be given to the resident, the legal guardian, and the responsible agency when:

(1) Ordered by the resident's physician, as recommended by the case manager through the interdisciplinary team;
(2) Physical or mental changes of the resident necessitate services which cannot be provided;
(3) Physical or mental changes of the caregiver result in the inability of the caregiver to provide the service;
(4) Resident wishes to transfer;
(5) Caregiver wishes to transfer the resident; or
(6) Loss of licensure or home is discontinued. [Eff FEB 03 1992] (Auth: HRS §§321-9, 321-11, 321-15.9) (Imp: HRS §321-15.9)

§11-89-22 Closure of a developmental disabilities domiciliary home. (a) The administrator shall notify the department in writing at least thirty days prior to an intended closure of the facility.

(b) The administrator shall notify all residents, guardians, and case managers at least thirty days prior to an intended closure of the facility.

(c) All residents shall be transferred to appropriate facilities prior to closure. [Eff FEB 03 1992] (Auth: HRS §§321-9, 321-11, 321-15.9) (Imp: HRS §321-15.9)

§11-89-23 Violations. (a) If the department determines that any of the requirements of this chapter has been violated, the department shall notify the administrator of such violations in writing. In such notice the department shall set forth the specific violations and may establish a specific time for the correction of each violation, and approve or disapprove a written plan of correction submitted by the administrator for each correctable violation.

(b) If violations are serious or substantive or if violations are not corrected within the time specified in the notice or in the accepted plan of correction, the department may do one or more of the following:

(1) Impose fines, as stated in section 321-20, HRS;
(2) Place restrictions on the license;
(3) Revoke the license; or
(4) Issue a provisional license.

(c) Serious or substantive violations which may result in administrative fines, license restriction, or license revocation include, but are not limited to:

(1) Mental, sexual or physical abuse or neglect of residents;
(2) Misappropriation of residents' funds or belongings;
(3) Failure to obtain department approval prior to engaging in thirty hours or more per week of employment outside of the facility;
(4) Absence of the caregiver from the facility without substitution by a responsible adult or as prescribed in the resident's individual plan;
(5) Admitting residents to the home in excess of the licensed capacity;
(6) Admitting intermediate, skilled or acute care level residents to the facility;
(7) Failure to properly safeguard all medications and comply with physician's orders;
(8) Failure to correct cited deficiencies within the time specified by the department;
(9) Failure to practice evacuation drills;
(10) Failure to inform residents of their rights on or before admission;
(11) Violations which threaten the health and safety of the residents;
(12) Failure to provide and implement a plan of care; and

(13) Transfer of residents to another facility without informing the agency or person responsible for paying all or a portion of the resident's care.

(d) Each decision of the department shall become final thirty days after notice of the decision unless within those thirty days the alleged violator requests in writing a hearing before the director. Upon such request, the director shall specify a time and place for the alleged violator to appear pursuant to chapter 91, HRS, and the department's rules of practice and procedure. [Eff FEB 03 1992]
(Auth: HRS §§321-9, 321-11, 321-15.9, 321-20)
(Imp: HRS §321-15.9)

§11-89-24 Severability. If any provision of this chapter or the application thereof to any person or circumstance is held invalid, the remainder of this chapter, or the application of the provision to other persons or circumstances, shall not be affected thereby. [Eff FEB 03 1992]
(Auth: HRS §§321-9, 321-11, 321-15.9)
(Imp: HRS §321-15.9)

§11-89-25 Reserved.

§11-89-26 Reserved.

§11-89-27 Reserved.

§11-89-28 Reserved.

§11-89-29 Reserved.

§11-89-30 Reserved.

§11-89-31 Reserved.

§11-89-32 Reserved.

§11-89-33 Reserved.

§11-89-34 Reserved.

§11-89-35 Reserved.

§11-89-36 Reserved.

§11-89-37 Reserved.

§11-89-38 Reserved.

§11-89-39 Reserved.

§11-89-40 Reserved.

§11-89-41 Reserved.

§11-89-42 Reserved.

§11-89-43 Reserved.

§11-89-44 Reserved.

§11-89-45 Reserved.

§11-89-46 Reserved.

§11-89-47 Reserved.

§11-89-48 Reserved.

§11-89-49 Reserved.

The Department of Health authorized the adoption of Chapter 11-89, Hawaii Administrative Rules, entitled "Developmental Disabilities Domiciliary Homes" on August 9, 1991, following public hearings held on Hawaii on July 29, 1991, on Maui on July 30, 1991, on Oahu on August 7, 1991 on Kauai on August 9, 1991, after public notice was given in the Hawaii Tribune-Herald on June 26, 1991, in the Maui News on June 26, 1991, in the Sunday Star-Bulletin & Advertiser on June 23, 1991, and in the Garden Isle on June 26, 1991.

Chapter 11-89, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

JOHN C. LEWIN, M.D.
Director
Department of Health

APPROVED:

JOHN WAIHEE
GOVERNOR
STATE OF HAWAII

Dated: JAN 2 3 1992

APPROVED AS TO FORM:

Deputy Attorney General

Filed: JAN 23 1992

Effective Date: FEB 03 1992